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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,059	10/30/2003	Donna M. Wilson	MSP001	8133
34496	7590	06/29/2006	EXAMINER	
RICHARD C. CALDERWOOD 2775 NW 126TH AVE PORTLAND, OR 97229-8381			LARSON, JUSTIN MATTHEW	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/697,059

Applicant(s)

WILSON, DONNA M.

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 October 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 7-9, 12, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson et al. (US 4,403,716).

Carlson et al. disclose a rack system on a rear bumper of a vehicle, the rack system comprising bumper connectors (16), vertical rails (20) pivotally coupled to the bumper connectors (via pins 46), horizontal rails (26,28,30) connected to the vertical rails via rail connectors (60), wherein the vertical rails are coupled to the bumper connectors, and support bars (24) extending substantially longitudinally and coupled to the vertical rails via bar connectors (80).

Regarding claim 8, the rail connectors (60) of Carlson et al. can be removed and two of the horizontal rails (28&30 for example) can be interchanged with one another, and can therefore be repositioned. One of the rails could also be removed from the rack entirely, in which case that rail would also be repositioned.

Regarding claim 13, the bar connectors of Carlson et al. are rotatable or movable to enable repositioning of the support bars (col. 4 lines 11-18).

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3. Claims 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogel (US 5,699,985).

Vogel discloses an apparatus for use with a motor vehicle and a trailer, the apparatus comprising a first means (tray 18/19 or rack 12) for carrying cargo items, a second means (10) coupled to the first means for coupling to a hitch (14) of the vehicle, and a third means (ball hitch mount 20) coupled to the first means for coupling to a hitch of a trailer, whereby the motor vehicle is enabled to simultaneously carry the cargo items and tow the trailer.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-5, 7, 8, 12, 14-18, and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lane et al. (US 6,662,983) in view of Johnson (US 6,474,522).

Lane et al. disclose a rack system on a rear portion of a vehicle, the rack system comprising vertical rails (3 & 8), horizontal rails (12 & 16(slidable)) connected to the vertical rails via movable rail connectors (11 & 7), wherein the vertical rails are coupled to a hitch mount (28) via stabilizer bar (4), repositionable support bars (15) extending substantially longitudinally and coupled to the horizontal rail (12) via bar connectors (welds), and a tray (17).

Lane et al. fails to disclose bumper connectors, as their rack system is disclosed as being attached to a vehicle's receiver hitch. Johnson, however, discloses a bumper attachment member that is adapted to allow rack systems having square connecting portions, such as those typically mounted to a vehicle's receiver hitch, to be mounted to the vehicle's bumper (see esp. Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the rack system of Lane et al. to the bumper of a vehicle using the bumper connector of Johnson, in order to utilize the rack on either a vehicle without a pre-existing hitch, or a vehicle in which the hitch was already in use, such as for hauling a trailer. Note that the bumper attachment member of Johnson has two bumper connectors (35).

Regarding claim 4, it is unclear as to what structural features are encompassed by the phrase "adapted for coupling to the hitch receiver", however, Examiner takes the position that the tray of Lane et al. is certainly adapted to be coupled to the hitch receiver when it is mounted to the rack system, effectively satisfying the limitations of the claim.

Regarding claims 5 and 18, the stabilizer bar (4) of Lane et al. would be coupled to the bumper connector of Johnson in the above-mentioned combination, and the stabilizer bar is also coupled to the tray via the rest of the rack that interconnects the two.

Regarding claims 21-23, it is unclear as to what structural features are encompassed by the phrase "adapted for carrying..." the various articles, however, Examiner takes the position that the tray of Lane et al. is certainly capable of supporting

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any of a surfboard, canoe, kayak, or ladder, effectively satisfying the limitations of the claim.

6. Claims 1-4, 7-9, 14, 15, and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allsop et al. (US 5,658,119) in view of Johnson.

Allsop et al. disclose a rack system (Figure 1) on a rear portion of a vehicle, the rack system comprising vertical rails (314, 316, & 342), horizontal rails (328, 330, 354, Figure 2) connected to the vertical rails via rail connectors (326), wherein the vertical rails are coupled to a hitch mount (310), support bars (320) extending substantially longitudinally and coupled to the horizontal rail (3), and a tray (318).

Allsop et al. fails to disclose bumper connectors, as their rack system is disclosed as being attached to a vehicle's receiver hitch. Johnson, however, discloses a bumper attachment member that is adapted to allow rack systems having square connecting portions, such as those typically mounted to a vehicle's receiver hitch, to be mounted to the vehicle's bumper (see esp. Figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to attach the rack system of Allsop et al. to the bumper of a vehicle using the bumper connector of Johnson, in order to utilize the rack on either a vehicle without a pre-existing hitch, or a vehicle in which the hitch was already in use, such as for hauling a trailer. Note that after this combination, Examiner is considering member (322) of Allsop et al. and the entire attachment member of Johnson to be the bumper connectors.

Regarding claim 4, it is unclear as to what structural features are encompassed by the phrase "adapted for coupling to the hitch receiver", however, Examiner takes the

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position that the tray of Allsop et al. is certainly adapted to be coupled to the hitch receiver when it is mounted to the rack system, effectively satisfying the limitations of the claim.

Regarding claims 8 and 9, the rail connectors (326) of Allsop et al. are standard bolts with nuts and washers that allow pivotal movement between vertical rails (314 & 316) and horizontal rails (354) with respect to one another, and also between the vertical rails and bumper connector (322) (see esp. Figure 3), effectively satisfying the limitations of the claims.

Regarding claims 10 and 19, Allsop et al. disclose springs coupled to the bumper connector (322) in order to retain pin (346) in slot (348) and maintain an upper portion of the rack system against the vehicle (in an upright position).

Regarding claims 21-23, it is unclear as to what structural features are encompassed by the phrase "adapted for carrying..." the various articles, however, Examiner takes the position that the tray of Allsop et al. is certainly capable of supporting any of a surfboard, canoe, kayak, or ladder, effectively satisfying the limitations of the claim.

Regarding claim 24, the support bars of Allsop et al. can be removed once pins (340) are removed, at which point the support bars could be flipped over and reinserted into the rack system such that their flat underside as shown would actually be facing upwards, in order to better support an object having a flat surface, effectively satisfying the limitations of the claim.

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7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in either of paragraph #5 or paragraph #6 above in view of Pasley (US 5,215,234).

The art as applied in paragraphs #5 and #6 above disclose the claimed invention except for a lockbox secured to the tray. Pasley, however, also discloses a rack system to be mounted at the rear of a vehicle, the rack having a tray, and teaches that a lockbox may be secured to the tray. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place a lockbox on the tray of either paragraph #5 or #6 above, as taught by Pasley, in order to provide a user with an enclosed and protected container in which they could store and transport their cargo.

8. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied in either of paragraph #5 or paragraph #6 above in view of Jeong (US 6,655,562).

The art as applied in paragraphs #5 and #6 above disclose the claimed invention except for at least one pad coupled to the rails. Jeong, however, also discloses a rack system and teaches that a pad (13) provided on the rails helps a user to grip the rack system and also provides protection. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include padding on at least one of the rails of the rack system of either paragraph #5 or #6 above, as taught by Jeong, in order to provide a user with a convenient place to grasp the rack system and to also provide protection for cargo stored on the rack. While the claim states that the pad serves to protect the vehicle from damage by the rack system, since no structure has



been set forth, Examiner takes the position that any padding on a rack system will satisfy this functional recitation, as the padding might serve to protect the vehicle when the rack is disconnected and laid in the vehicle's trunk or truck bed for storage, to name one example of when this might be the case.

9. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel (US 5,699,985) in view of Hutyra (US 4,815,638).

Vogel discloses a vehicle comprising a frame, a body coupled to the frame, a bumper and a hitch receiver (14) both coupled to the frame at a rear of the body, and a tray (18/19) coupled to the hitch receiver. Vogel fails to disclose a cargo rack coupled only to the bumper, the cargo rack having vertical rails, horizontal rails coupled to the vertical rails, and support bars movably coupled to the horizontal rails. Note that the rack system of Vogel is intended to carry mopeds, providing only a tray member on which the moped is held.

Hutyra, however, also discloses a rack system for carrying a moped and teaches that in addition to a tray member (46) for supporting the moped, additional rack members (72) may be attached to the vehicle's bumper (22) for engaging the moped's handle bars for more support. These members (72) are attached only to the bumper and include vertical rails (80), horizontal rails (84, 79, & 72) coupled to the vertical rails, and support bars (74) moveably coupled to the horizontal rails. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include vertical support members in addition to the tray in the rack system of Vogel, as taught by Hutyra, in order to provide more support for the moped in its upright position.

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**Conclusion**

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on Monday - Friday, 8am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JML  
6/21/06

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER